

INFORMATION

For *Aeneas McLeod, Town Clerk of Edinburgh.*

AENEAS McLEOD having Purchast the Office of Town-Clerk of *Edinburgh* during his Life, upon payment of a Great Sum of Money, which was well known, and allowed by the Magistrats for the time; he did, and doth reckon himself Secure, that he shall enjoy the said Office according to his Gift.

Some of the present Magistrats having taken a Disgust at their Clerk, have not been pleased to favour him with their Countenance, and have made many attempts to brangle his Liferent Gift.

In prosecution of that Design, the Magistrats did apply to the last Session of Parliament, in *anno* 1695, Representing a great many pretended Malversations, which were made known in Show, and desiring that they might be judged in Parliament.

When the Petition and Answers were considered, it was moved and urged in Parliament, that the Decision of the pretended Malversations might be remitted to the Town Council; But the Estates of Parliament perceiving that the Magistrats had Stated themselves as Accusers by offering the Complaint, thought not fit to make them Judges of it, but remitted the Petition with the Answers to the Lords of Session to be Discusst summarly as accords.

These pretended Malversations were represented to be very Attrocious; because it was not expected the Parliament would have time to inquire: but after the Decision was remitted to the Lords of Session, there was no more mention of them; and the World may Judge by that Petition, and what hath since followed, that the Complainers did not relent, but were self convict that the Complaint would appear Groundless in the eyes of any indifferent Judge.

This Attempt proving abortive: The Magistrats reckoned themselves Judges of all other Malversations not stated before the Parliament; And diligent Search and Expiscation was made for new pretences, and a Libel was framed with great Secrecy, and at last the Clerk was Cited to Answer in 24 Hours, and all was prepared to deprive him: But in that short Space, he made full and convincing Answers to any indifferent Judge, and did apply to the Lords of Session, Representing the Libel and Answers with the just reason he had to suspect his Judges, and offered to Debate his Cause summarly before the Lords, which Reason of Advocation carried so much Light and evidence along with it, that the Lords did very readily Advocat the Cause.

The Advocation put a Period to these pretended Malversations also, for the Magistrats very well know that none of them would sustain, unless they themselves were the Judges, they were wearied of their Clerk, and impatient to be fettered by the Legal tye of his Liferent Gift.

The next Design was laid yet closser, they had perceived that any Citation or Advertisement, would give the means of Defence and Application to an indifferent Judge, and therefore, they invented a pretence of Regulation, but with a plain Design to Regulat the Clerk out of Doors, on this pretence they required Access to the Records truely to expiscat further Crimes, & all was again prepared, that right or wrong the Clerk might once be deprived, and another put in his Place; and he left to seek his Reparation against the Magistrats of *Edinburgh*, who are a great Party; and by sad Experience to the Town, have been found to manage these kind of Processes Liberally on the Publick Expenses. But the Clerk being perfectly Informed of this project, he applyed to the Lords by a 2d Bill of Advocation, whereof the full Tenor is hereto subjoyned, in which it was shortly Represented to the Lords, that there was a Committee of the Town Council appointed to Examine the Dues of the Town Clerks Chamber, and to Regulat the same, and also to Expiscat Grounds of a Quarrel against the Clerk, and to proceed summarly, and give forth Sentence upon the Report of that Committee,

ANEAS McLEOD having Purchast the Office of Town-Clerk of Edinburgh during his Life, upon payment of a Great Sum of Money, which was well known, and allowed by the Magistrats for the time; he did, and doth reckon himself Secure, that he shall enjoy the said Office according to his Gift.

Some of the present Magistrats having taken a Disgust at their Clerk, have not been pleased to favour him with their Countenance, and have made many attempts to brangle his Life, rent Gift.

In prosecution of that Design, the Magistrats did apply to the last Session of Parliament in anno 1695, Representing a great many pretended Malversations, which were made public in Show, and desiring that these Malversations might be judged in Parliament.

When the Petition and Answers were considered, it was moved and urged in Parliament, that the Decision of the pretended Malversations might be remitted to the Town Council; But the Estates of Parliament perceiving that the Magistrats had Stated themselves as Accusers by offering the Complaint, thought not fit to make them Judges of it, but remitted the Petition with the Answers to the Lords of Session to be Discusst summarly as accords.

These pretended Malversations were represented to be very Atrocious; because it was not expected the Parliament would have time to inquire: but after the Decision was remitted to the Lords of Session, there was no more mention of them; and the World may Judge by that Petition, and what hath since followed, that the Complainers did not relent, but were self convict that the Complaint would appear Groundless in the eyes of any indifferent Judge.

This Attempt proving abortive: The Magistrats reckoned themselves Judges of all other Malversations not stated before the Parliament; And diligent Search and Expiscation was made for new pretences, and a Libel was framed with great Secrecy, and at last the Clerk was Cited to Answer in 24 Hours, and all was prepared to deprive him: But in that short Space, he made full and convincing Answers to any indifferent Judge, and did apply to the Lords of Session, Representing the Libel and Answers with the just reason he had to suspect his Judges, and offered to Debate his Cause summarly before the Lords, which Reason of Advocation carried so much Light and evidence along with it, that the Lords did very readily Advocat the Cause.

The Advocation put a Period to these pretended Malversations also, for the Magistrats very well know that none of them would sustain, unless they themselves were the Judges, they were wearied of their Clerk, and impatient to be fettered by the Legal rye of his Liferent Gift.

The next Design was laid yet closer, they had perceived that any Citation or Advertisement, would give the means of Defence and Application to an indifferent Judge, and therefore, they invented a pretence of Regulation, but with a plain Design to Regulat the Clerk out of Doors, on this pretence they required Access to the Records truely to expiscat further Crimes, & all was again prepared, that right or wrong the Clerk might once be deprived, and another put in his Place; and he left to seek his Reparation against the Magistrats of Edinburgh, who are a great Party; and by sad Experience to the Town, have been found to manage these kind of Processes Liberally on the Publick Expenses. But the Clerk being perfectly Informed of this project, he applyed to the Lords by a 2d Bill of Advocation, whereof the full Tenor is hereto subjoyned, in which it was shortly Represented to the Lords, that there was a Committee of the Town Council appointed to Examine the Dues of the Town Clerks Chamber, and to Regulat the same, and also to Expiscat Grounds of a Quarrel against the Clerk, and to proceed summarly, and give forth Sentence upon the Report of that Committee, and shewing the just cause to suspect, partiality in all that Procedure: And therefore desiring that all Regulation, or further Cognition of the Clerks Crimes, should be Advocat to the Lords; and the Magistrats Discharged from further Proceeding, or Cognoscing the Clerks Malversations: And the Lords upon Report *in presentia*, did also pass the said 2d. Advocation.

The Clerk did believe he was secure, and that all pretended Malversations, either already found out, or to be expiscat, were stated before the Lords of Session, by the Remit of Parliament, and the several Advocations; and to put the matter yet further beyond que-

sion he raised a Process before the Lords, for declaring his Right : To the effect, that the Lords might be his only competent Judges.

The Election of the new Magistrats doth now approach, and it was expected that Magistrats might have been chosen, who would not have the same unkindness to the Clerk, but the former Attempts proving ineffectual, because they did not debord from the methods of Law, and Law would not serve the purpose : The same influence prevailed wholly to neglect and pass over the very forms of Law, as well as material Justice; and in open contempt of the foresaid second Advocation, discharging all further cognition of the Clerk's Malversations, they did upon the 4th of September Instant, summarily deprive the Clerk, without any Complaint exhibit against him, or any other formality : But the Clerk having come to attend the Council according to his Duty, certain pick'd out alledged neglects were stated before the Council; and immediatly the Clerk was turned out of Doors, till they should determine upon the matter, & after some debate, the Clerk was deprived, another named to his Place. Locks were presently put upon the Clerk's Chamber door, & a Centinel was put there to secure it.

The Clerk doth not charge this upon the Town-council, it was prepared and projected by a few, who carryed it on, others were surprized, and severals not clear to proceed in any such summar manner.

As to the form of procedure, The Clerk needs use no Argument, but only intreats, that the true matter of Fact before-mentioned may be considered, which he will verify in every circumstance : He will justify his innocence in the matter, in due time, and make it appear, that the pretended Omissions now charged upon him, are yet more frivolous than any of the former Articles, which vanished, so soon as they were appointed to be stated before an equal and indifferent Judge : But being deprived of his Possession, without the form of Law by Judges suspect and bound up, that they could not proceed at all, much less without a Complaint or Process, he ought to be summarly repossess'd : And he doth not in the least question that the honour of the Government; and publick justice of the Nation will be concerned to vindicat and repair the indignity and affront that is done to His Majesties Authority, and to the Lords of Session, who bear the same, in as far as the Magistrats have proceeded directly contrary to the prohibition contained in the Letters of Advocation, duly intimated to the Magistrats, whereby they were expressly prohibited, and discharged to judge any of the Clerk's Malversations; and that there may not be the least shadow or subterfuge, upon pretence, that the alledged Omissions are posterior to the Advocation and Prohibition therein contained : The Clerk doth positively aver, that all the pretended Omissions charged against him, are prior to both the saids Advocations : And further, the Prohibition, as well as the reason of the Advocation, is general, that they should meddle with no Malversations, because the Magistrats and Council had stated themselves, as Adversaries and Complainers, and their enmity is now further verified, by what hath past since.

As to the Material Justice of the Sentence, the Clerk is not in a present condition to make a full and exact State of what is charged upon him, nor doth so much as know the Tenor of the Sentence against him, because all he heard of his Crime were a few words express'd by the Magistrats, to his great surprize, and so he was removed, untill he was called to hear the Councils Interloquitor read; but the Magistrats have been very careful to take up the Minuts of that Journal, and the Sentence out of the Under-Clerks hands, that he may not so much as know what is charged or determined against him, or be in condition to vindicat himself in the eyes of the World : But whether Guilty or not Guilty, the Illegal manner of Deprivation requires that he should be repossess'd, & the Cause Judged in the forms; yet that he may not ly under the imputation of guilt, in the mean time he will fairly state all that was charged upon him, as far as he can collect either from his Memory of what past at the time, or by information of what any of the Council pretend, to vindicate their procedure.

The Charge is, That Tacks set by the Magistrats and Council, are only Signed by the Magistrats, and the Clerk by his Office Signs for the rest of the Common Council, besides the Magistrats : And it is the duty of the Clerk to see Witnesses Adhibite, and Subscribing as Witnesses to the Subscription of the Magistrats and Tacks-men : Nevertheless he Malversed by neglecting his Duty in the whole Tract of 10 or 11 Tacks, which are all utterly null and ineffectual by his neglect : In so far as, 1. He Signed one or more Tacks as Nottar for the Community, but got no Witnesses adhibite to them. 2. Other Tacks were not so much as signed

tend the Council according to his Duty, certain pick'd out and charged neglects were made before the Council; and immediately the Clerk was turned out of Doors, till they should determine upon the matter, & after some debate, the Clerk was deprived, another named to his Place. Locks were presently put upon the Clerk's Chamber door, & a Centinel was put there to secure it.

The Clerk doth not charge this upon the Town-council, it was prepared and projected by a few, who carryed it on, others were surprized, and severals not clear to proceed in any such summar manner.

As to the form of procedure, The Clerk needs use no Argument, but only intreats, that the true matter of Fact before-mentioned may be considered, which he will verify in every circumstance: He will justify his innocence in the matter, in due time, and make it appear, that the pretended Omissions now charged upon him, are yet more frivolous than any of the former Articles, which vanished, so soon as they were appointed to be stated before an equal and indifferent Judge: But being deprived of his Possession, without the form of Law by Judges suspect and bound up, that they could not proceed at all, much less without a Complaint or Process, he ought to be summarly repossessed: And he doth not in the least question that the honour of the Government; and publick justice of the Nation will be concerned to vindicate and repair the indignity and affront that is done to His Majesties Authority, and to the Lords of Session, who bear the same, in as far as the Magistrats have proceeded directly contrary to the prohibition contained in the Letters of Advocation, duly intimated to the Magistrats, whereby they were expressly prohibited, and discharged to judge any of the Clerk's Malversations; and that there may not be the least shadow or subterfuge, upon pretence, that the alledged Omissions are posterior to the Advocation and Prohibition therein contained: The Clerk doth positively aver, that all the pretended Omissions charged against him, are prior to both the saids Advocations: And further, the Prohibition, as well as the reason of the Advocation, is general, that they should meddle with no Malversations, because the Magistrats and Council had stated themselves, as Adversaries and Complainers, and their enmity is now further verified, by what hath past since.

As to the Material Justice of the Sentence, the Clerk is not in a present condition to make a full and exact State of what is charged upon him, nor doth so much as know the Tenor of the Sentence against him, because all he heard of his Crime were a few words express'd by the Magistrats, to his great surprize, and so he was removed, untill he was called to hear the Councils Interlocutor read; but the Magistrats have been very careful to take up the Minuts of that Journal, and the Sentence out of the Under-Clerks hands, that he may not so much as know what is charged or determined against him, or be in condition to vindicate himself in the eyes of the World: But whether Guilty or not Guilty, the Illegal manner of Deprivation requires that he should be repossessed, & the Cause Judged in the forms; yet that he may not ly under the imputation of guilt, in the mean time he will fairly state all that was charged upon him, as far as he can collect either from his Memory of what past at the time, or by information of what any of the Council pretend, to vindicate their procedure.

The Charge is, That Tacks set by the Magistrats and Council, are only Signed by the Magistrats, and the Clerk by his Office Signs for the rest of the Common Council, besides the Magistrats: And it is the duty of the Clerk to see Witnesses Adhibite, and Subscribing as Witnesses to the Subscription of the Magistrats and Tacks-men: Nevertheless he Malversed by neglecting his Duty in the whole Tract of 10 or 11 Tacks, which are all utterly null and ineffectual by his neglect: In so far as, 1. He Signed one or more Tacks as Nottar for the Community, but got no Witnesses adhibite to them. 2. Other Tacks were not so much as Signed by him for the Community, nor were any Witnesses adhibite to the Magistrats, or Tacks-men Subscriptions, and so the Tacks are null through his default, which is a continued Tract of Supine Negligence. 3. Even as to the form of Procedure, they alledge a Precedent in the case of Sir William Thomson, who was summarly deprived by the Magistrats, without Process and their Sentence was sustained by a solemn Decision of the Lords.

To this mighty Charge it is Answered in general, that the Clerk did not omit one Circumstance

ance of his Duty, but was grievously and unjustly oppressed in the whole matter, of setting of Tacks; nor is there an Accuser, nor any Damage actually sustained, or which possibly could be sustained, holding the matter of Fact to be true, as is alledged.

The Clerk freely acknowledges, It is suitable to his Office and Duty, to Sign for the Community, and likewise to see Witnesses adhibite, and so long as he was allowed he did his duty exactly; but the Magistrats, and particularly the Thesaurer, were pleased to envy the just Casualty of a Complement in use to be payed by the Tacks-men at the Signing of Tacks, and so soon as the Tacks mentioned in the Charge were Signed by the Magistrats, the Thesaurer in presence, and by allowance of the Council, took up the Tacks from the Council-Board, on pretence forsooth; That the Tacks being signed by the Magistrats, Blank as to the Sums and Tackmens Names, it was not fit to trust the Clerk with them, and did not allow the Clerk to be present when the Tacks were Signed by the Tacks-men, but caused Sign the same privately in his own Chamber, without any advertisement to the Clerk or his Servants to be present; the Thesaurer took no notice to adhibite Witnesses, so that some Tacks have no Witnesses insert, others none Subscribing; yea, after the Tacks were Signed in this irregular manner, the Thesaurer was not then careful to advertise the Clerk, or to put the Tacks in his hand, but of the Tacks 4 or 5 remain yet in the Thesaurers hands, and the remainder which were Signed in the Month of *October*, were many Months after given in to the Under-Clerks Servant by the Thesaurer, and were never in the Clerks hands, or under his trust first nor last, but were brought by that Servant at the hour of Mr. *McLeod's* Deprivation, and delivered by him at the Council Table.

This Servant who had the Papers, has not so much as an immediate dependance on Mr. *McLeod*, the Under-Clerk his Master is a Depute of the Councils nomination, and depends immediately upon them.

These being the true Circumstances of the Matter of Fact, let the whole World judge whether the Thesaurer did not unjustly incroach on the Clerks Office and Casualty, or if the Clerk was guilty of any neglect of his Duty.

This treatment of the Clerk was so extraordinary and injurious, that possibly the Matter of Fact represented by the Clerk, may not at first gain full credit, but to verify the same, the Clerk is well perswaded.

1. That the Thesaurer will acknowledge, that the Tack were so taken up, and privately Signed, which will be fortified, if need be, by the Testimony of the Tacks-men and Cautioners.
2. The Thesaurer will acknowledge, that 4 or 5 of these Tacks remained in his hand, at the time when the Clerk was Challenged.
3. The whole Members of the Council will prove that the Tacks were taken up by the Thesaurer in Face, and by Allowance of Council.
4. The Under-Clerk, and his Servant who are the ordinary Witnesses to all the Tacks, being asked how they came not to Sign as Witnesses, did declare in presence of Council, at the time when the Clerk was deprived, that they could not sign, because they did not see the Tacks-men subscribe.

The Magistrats further Alledged, That whatever may be said, as to the Signing of the Witnesses, yet why did the Clerk neglect to Sign for the Community in all the Tacks, seeing the Magistrats Signed, and why did he Sign for the Community in some, and Ommit in others.

It is Answered very plainly, It was neither usual nor safe to Sign for the Community at the time, when the Magistrats Signed; because Sir *William Thomson's* Crime was, that having signed for the Community the Tack fell in the Tacks-mens hand without signing, whereby the Town was Bound, and the Tacks-men Loose, and therefore since that time, Clerks do not adhibit their Subscription for the Community, till the Tacks-men have subscribed, because, untill the Clerk sign for the Community, the Tack is incomplete, and so tho' it should fall by, or come in the hands of the Tacks-men, the Town can never be prejudged, and the Thesaurer having got the Tack subscribed privately by the Tacks-men, it was his fault that the Clerk had no opportunity to sign for the Community.

2. As to the Tacks signed by the Clerk for the Community, as he remembers, there is but on in that Circumstance. And it is so far from being a further Charge, that it fully evidences the Clerks care to do his Duty, when ever he had access to do it, which after all was not for a considerable time after it was signed; For the Thesaurer having unjustly incroached, by taking

did not allow the Clerk to be present when the Tacks were Signed by the Tacks-men, but caused Sign the same privately in his own Chamber, without any advertisement to the Clerk or his Servants to be present; the Thesaurer took no notice to adhibite Witnesses, so that some Tacks have no Witnesses insert, others none Subscribing; yea, after the Tacks were Signed in this irregular manner, the Thesaurer was not then careful to advertise the Clerk, or to put the Tacks in his hand, but of the Tacks 4 or 5 remain yet in the Thesaurers hands, and the remainder which were Signed in the Month of *October*, were many Months after given in to the Under-Clerks Servant by the Thesaurer, and were never in the Clerks hands, or under his trust first nor last, but were brought by that Servant at the hour of Mr. *McLeod's* Deprivation, and delivered by him at the Council Table.

This Servant who had the Papers, has not so much as an immediate dependance on Mr. *McLeod*, the Under-Clerk his Master is a Depute of the Councils nomination, and depends immediately upon them.

These being the true Circumstances of the Matter of Fact, let the whole World judge whether the Thesaurer did not unjustly incroach on the Clerks Office and Casualty, or if the Clerk was guilty of any neglect of his Duty.

This treatment of the Clerk was so extraordinary and injurious, that possibly the Matter of Fact represented by the Clerk, may not at first gain full credit, but to verify the same, the Clerk is well perswaded.

1. That the Thesaurer will acknowledge, that the Tack were so taken up, and privately Signed, which will be fortified, if need be, by the Testimony of the Tacks-men and Cautioners. 2. The Thesaurer will acknowledge, that 4 or 5 of these Tacks remained in his hand, at the time when the Clerk was Challenged. 3. The whole Members of the Council will prove that the Tacks were taken up by the Thesaurer in Face, and by Allowance of Council. 4. The Under-Clerk, and his Servant who are the ordinary Witnesses to all the Tacks, being asked how they came not to Sign as Witnesses, did declare in presence of Council, at the time when the Clerk was deprived, that they could not sign, because they did not see the Tacks-men subscribe.

The Magistrats further Alledged, That whatever may be said, as to the Signing of the Witnesses, yet why did the Clerk neglect to Sign for the Community in all the Tacks, seeing the Magistrats Signed, and why did he Sign for the Community in some, and Ommit in others.

It is Answered very plainly, It was neither usual nor safe to Sign for the Community at the time, when the Magistrats Signed; because Sir *William Thomson's* Crime was, that having signed for the Community the Tack fell in the Tacks-mens hand without signing, whereby the Town was Bound, and the Tacks-men Loose, and therefore since that time, Clerks do not adhibit their Subscription for the Community, till the Tacks-men have subscribed, because, untill the Clerk sign for the Community, the Tack is incomplete, and so tho' it should fall by, or come in the hands of the Tacks-men, the Town can never be prejudged, and the Thesaurer having got the Tack subscribed privately by the Tacks-men, it was his fault that the Clerk had no opportunity to sign for the Community.

2. As to the Tacks signed by the Clerk for the Community, as he remembers, there is but on in that Circumstance. And it is so far from being a furdher Charge, that it fully evidences the Clerks care to do his Duty, when ever he had access to do it, which after all was not for a considerable time after it was signed; For the Thesaurer having unjustly incroached, by taking up the Tacks, and the Council having allowed him in it, the Clerk might very well have refused, to have concerned himself furdher in the matter; yet so soon as any of these Tacks came to the Clerks hands, signed by the Tacks-men and Cautioners, he did adhibit a Subscription, for the Council, which is all that is properly his Duty, he could not cause Witnesses Subscribe, because he knew not who were Witnesses to the Tacks mens Subscriptions nor knew he the Date of it And this Tack, which is signed by the Clerk is the only Important Tack in all the Charge all theremanent Tacks which came never to the Clerks hands, being only of the smaller Customs, and there is only resting of them all one quarter.

1. The

21 The Town neither did, nor could possibly receive any material damage, by all these pretended Omissions, because the Town Tacks are all set by Roup, and the Form of Roup is, First, The Articles and Conditions of the Roup are set down in write, the Party preterred takes Instruments, and his Offer is presently set down, and signed by him in presence of the Council; So that albeit there were no Tack, or that the Tack should labour under any nullity, the Tacks-man is bound by signing his Offer, and by possessing, by virtue of the Roup, and therefore it hath not been a general custom to grant formal Tacks at all of the small Customs, such as these in question are, but the Subscribed Roup hath been generally found sufficient, without any further Tack, and therefore, there neither was, nor could be any damage, and beside Omissions, though they could really be instructed, as in this case, there is not one circumstance of neglect in the Clerk, yet they are not relevant to infer Deprivation, especially in matters of small moment for there ought always to be a Proportion, and Measure betwixt the Crime and the Punishment.

And whereas it is alledged, that the Council did proceed as summarily, and upon as slender Grounds in the case of Sir *William Thomson*, and their Sentence was sustained by the Lords of Session,

It is answered 1. The Procedure against Sir *William Thomson*, was of no good consequence to the Town, and very little approved by the Nation: and after much Charge on both sides, the Matter was ended by Transaction, whereby Sir *William* got 4000 Merks out of the Office of yearly Annuity during his life, without trouble, or attendance: And because the *superplus* of the Dues of the Office were very inconsiderable, the succeeding Conjoint Clerks got 2000 Merks yearly, payed out of the Common-Good during Sir *Williams* lifetime: And after all the Clerks that were named to succeed him, did Resign; and a new Gift was granted upon his Dimission; nor was that Decree ever Extracted: and if the Transaction had not prevented, it would have probably furnished a Precedent to the Clerks in this case. And therefore that Practique was ever since, rather considered as a Scar-Crow, than a Copy to be Transcribed.

The cases differ vastly; For 1. In that case there was an unjustifiable Omission, which might have been of great damage to the Town, instructed and acknowledged: Sir *William* desired no delay of Procedure but judicially submitted himself to the Town. 2. In that case it was specially remarked, that his Office was gratuitous. 3. There the Magistrates had shewn no evil Intention or Malice against their Clerk, whereas here they were stated as Accusers before the Parliament, and upon that Ground two Advocations had past by the Lords of Session; the last of which, contained a general Prohibition, that they should not Judge of any Malversation of the Clerk; yet in manifest contempt, they have Judged and Deprived upon pretended Omissions, anterior to the said Advocations duely intimated.

And lastly, because the Magistrates mention a Precedent, the Clerk condescends upon another, in the case of *William Bell* Town-Clerk of *Linlithgow*, where the Magistrates having Formerly deprived their Clerk, upon a Letter impetrat from the late King *James*, and he being restored, they deprived him again, not in such a Preposterous and Arbitrary Method as this was; but being warned to attend the Court, at a certain Dyet Lybels were exhibit against him; and he alledging that he had not received Doubles of the Lybels, and craving a delay, it was granted for one day; and in stead of Attending, he came to *Edinburgh* to procure an Advocation; therefore the Magistrates the next day, did proceed to Deprivation in absence, and named a Successor.

The Clerk applyed to the Privy Council, Representing the former Hardship he had received, and that there was no competent time allowed to obtain Suspension or Advocation, before pronouncing and executing the Sentence, and upon that Ground after full Debate, he was Reponed by the Privy Council: and the Magistrates having made a second Application, the same was Rejected, and he re-possessed, by vertue whereof, he enjoys his Office to this day.

This Practique is late, about a 12 Month ago was fully Debate, and considered by the Lieges, as a Security of their Places and Possessions, that the same might not be summarily inverted: And the Ground of the Decision quadrats, *viz.* the Malice of the Magistrates, only in the present case; beside their known Malice, there was a legal Restraint upon them. The Magistrates of *Linlithgow* used the Formality of a Lybel, and were so bountiful as to allow a Double, and a Day to Answer, and the Clerk did not attend them at that Day, where

relevant to infer Deprivation, especially in matters of small moment for there ought always to be a Proportion; and Measure betwixt the Crime and the Punishment.

And whereas it is alledged, that the Council did proceed as summarily, and upon as slender Grounds in the case of Sir *William Thomson*, and their Sentence was sustained by the Lords of Session,

It is answered 1. The Procedure against Sir *William Thomson*, was of no good consequence to the Town, and very little approved by the Nation: and after much Charge on both sides, the Matter was ended by Transaction, whereby Sir *William* got 4000 Merks out of the Office of yearly Annuity during his life, without trouble, or attendance: And because the *superplus* of the Dues of the Office were very inconsiderable, the succeeding Conjoint Clerks got 2000 Merks yearly, payed out of the Common-Good during Sir *Williams* lifetime: And after all the Clerks that were named to succeed him, did Resign; and a new Gift was granted upon his Dimission; nor was that Decree ever Extracted: and if the Transaction had not prevented, it would have probably furnished a Precedent to the Clerks in this case. And therefore that Practique was ever since, rather considered as a Scar-Crow, than a Copy to be Transcribed.

The cases differ vastly; For 1. In that case there was an unjustifiable Omission, which might have been of great damage to the Town, instructed and acknowledged: Sir *William* desired no delay of Procedure but judicially submitted himself to the Town. 2. In that case it was specially remarked that his Office was gratuitous. 3. There the Magistrates had shewn no evil Intention or Malice against their Clerk, whereas here they were stated as Accusers before the Parliament, and upon that Ground two Advocations had past by the Lords of Session; the last of which, contained a general Prohibition, that they should not Judge of any Malversation of the Clerk; yet in manifest contempt, they have Judged and Deprived upon pretended Omissions, anterior to the said Advocations duly intimated.

And lastly, because the Magistrates mention a Precedent, the Clerk condescends upon another, in the case of *William Bell* Town-Clerk of *Linlithgow*, where the Magistrates having Formerly deprived their Clerk, upon a Letter impetrate from the late King *James*; and he being restored, they deprived him again, not in such a Preposterous and Arbitrary Method as this was; but being warned to attend the Court, at a certain Dyet Lybels were exhibit against him; and he alledging that he had not received Doubles of the Lybels, and craving a delay, it was granted for one day; and in stead of Attending, he came to *Edinburgh* to procure an Advocation; therefore the Magistrates the next day, did proceed to Deprivation in absence, and named a Successor.

The Clerk applied to the Privy Council, Representing the former Hardship he had received, and that there was no competent time allowed to obtain Suspension or Advocation, before pronouncing and executing the Sentence, and upon that Ground after full Debate, he was Reponed by the Privy Council: and the Magistrates having made a second Application, the same was Rejected, and he re-possessed, by vertue whereof, he enjoys his Office to this day.

This Practique is late, about a 12 Month ago was fully Debate, and considered by the Lieges, as a Security of their Places and Possessions, that the same might not be summarily inverted: And the Ground of the Decision quadrates, *viz.* the Malice of the Magistrates, only in the present case; beside their known Malice, there was a legal Restraint upon them. The Magistrates of *Linlithgow* used the Formality of a Lybel, and were so bountiful as to allow a Double, and a Day to Answer, and the Clerk did not attend them at that Day: whereas here, there was no Accuser, no Lybel, no Process, no Delay, but all precipitantly done in an hour; and the Clerk turned in to the Back-Closet under Observation of one of their Number, Locked up, and in a manner Imprison'd, till he received his Sentence: and when he was called in to hear the pretended Sentence, and being moved by the illegality of it, he did protest against it and particularly objected the Advocation Signet; and Intimat, the Under Clerk was Discharged by the Provost in face of Council, to receive the Instrument Money, or extend the Instrument, which Command the Under Clerk obeyed: and on his refusing to extend the Instrument, on no other pretence then that the Provost had Discharged him, there was an Instrument taken against him.

The A D V O C A T I O N

WILLIAM, &c. For as meikle as it is Humbly meant and shewn to Us, by Our Lovn, Mr. *James Nicolson* Town Clerk of *Edinburgh*, that where the Magistrats of the said Burgh, have appointed a Committee of the Town Council to Examine the Dues of the Town Clerks Chambr, and to Regulat the same, as also to Expiscat Grounds of Quarrel against the said Complainer, and upon report of the said Committee to proceed most summarly, and give forth Sentences, and Acts of Council against the said Complainer most Wrongously and Unjustly, Considering, it is of verity, That, 1. The saids Magistrats have shewn themselves most Partial and suspect, and were formerly, the said Complainers Accusers; And whereupon the Lords of Council and Session, Did already sustain Advocation at his Instance on another Occasion. 2. Since that Advocation, the saids Magistrats have shewn an extraordinary Disdain and Hred to the saids Complainers person, in so much that they have Deserted the ordinary Place of Meeting of the Town Council, on'y out of Unkindness to him; and lest he should have Occasion to Exerce his Office, their Meetings are kept in Privat places, or the Provost his House to which the said Complainer has no Access, nor is Advertised; and do dayly Maligne, Traice, and Declair their ill Intenctions in relation to him. 3. By the Nature of the said Complainers Gift, he is Secured for Life, in all the Emoluments, Profits, and Advantages, whic any of his Predecessors were in Possession of, with all the Casualties belonging thereto use and Wont, whereupon he raised a Declarator before the Lords of Our Council & Session, against the Magistrats of the Good Town for hearing it, found & Declaired, that the ordinary Casualties & Profits of the Chamber, whereof he is now in Possession, are the same that were enjoyd by former Clerks of the Good Town thir Fiftieth years by past, and upwards, and are more than Competent Provisions and Allowances, for Pains and Expense, and Attendance; and the present Attempt is but a further Prosecution, and a new Shape of the former Unkindness; and ought in the like manner to be Advocat. 4. The said Complainer's Right being so Established, it's not in the power of the Magistrats to Regulat the same, without the Authority of the Lords of Our Council and Session during the Life of the said Complainers, and that ever Authority an Extraordinary Commission of Parliament may have, yet a Town Council cannot pretend to Evacuat the Clerks Right under the Notion of Regulation. 5. The Cognoscing of Malversations against the said Complainer ought likewise to be Advocated, beca of the foresaid Suspition of the Judge: And likewise of the said Complainers Declarator, upon the baill Heads and Clauses of the Gift; and for Declaring likewise that he is free of Malversation, and ought to Bruick his Office during his Life, peaceablie, conform to his said Commission as the said Gift, and Summonds of Declarator duely Executed, and call shewn to Our saids Lords has Testified, and so Our saids Lords may evidently perceive how Wrongously, and Unjustly the saids Magistrats intend to proceed in the said Matter, and pronounce and give forth Acts of Regulations, and Expiscat Grounds of Quarrel against the said Complainer, albeit they be no ways Judges competent to him therein for the Reasons and Causes foresaid, and others, &c. And therefore, the foresaid Procedure ought, and should be Advocate from the saids Magistrats to the saids Lords as only Judges Competent and unsuspected thereto, and the saids Magistrats ought, and should be Discharged from farther Proceeding, or Cognoscing in the said Matter, or Troubling, Pursuing, or Insisting against the said Complainer, as to Cognoscing of Malversations, or Regulat of Clerks Dues in time coming for the Reasons and Causes foresaid, &c. as is alleadged. **CUR WILL IS HEREIORE,** And We Charge you, that ye lawfully Summond, Warn, and Charge the saids Magistrats, and their Clerk-deput Personally, or at their Dwelling-places, to Compear before Our saids Lords of Council and Session at *Edinburgh*, or where it shall happen them to be for the time, the First Day of *June* next to come, in the Hour of Cause with continuacion of Days, bringand with them all Minuts and Acts of Regulations made by them in the foresaid Matter to be Seen and Considered by Our saids Lords, and to hear and see the same Advocate from them to Our saids Lords, and they Discharged from any farther Proceeding, Cognoscing and Determining therein in time coming, in manner underwritten. *Attest*

Advocation, the saids Magistrats have shown an extraordinary Disdain and Hatred to the saids Complainers person, in so much that they have Deserted the ordinary Place of Meeting of the Town Council, only out of Unkindness to him; and lest he should have Occasion to Exercise his Office, their Meetings are kept in Privat places, or the Provost his House to which the said Complainer has no Access, nor is Advertised; and do dayly Maligne, Traice, and Declair their ill Intentions in relation to him. 3. By the Nature of the said Complainers Gift, he is Secured for Life, in all the Emoluments, Profits, and Advantages, whic any of his Predecessors were in Possession of, with all the Casualties belonging thereto use and Wont, whereupon he raised a Declarator before the Lords of Our Council & Session, against the Magistrats of the Good Town for hearing it, found & Declaired, that the ordinary Casualties & Profits of the Chamber, whereof he is now in Possession, are the same that were enjoyd by former Clerks of the Good Town thir Fiftieth years by past, and upwards, and are more than Competent Provisions and Allowances, for Pains and Expense, and Attendance; and the present Attempt is but a further Prosecution, and a new Shape of the former Unkindness; and ought in the like manner to be Advocat. 4. The said Complainers Right being so Established, it's not in the power of the Magistrats to Regulat the same, without the Authority of the Lords of Our Council and Session during the Life of the said Complainers, and that ever Authority an Extraordinary Commission of Parliament may have, yet a Town Council cannot pretend to Evacuat the Clerks Right under the Notion of Regulation. 5. The Cognoscing of Malversations against the said Complainer ought likewise to be Advocated, because of the foresaid Suspition of the Judges: And likewise of the said Complainers Declarator, upon the hails Heads and Clauses of the Gift; and for Declaring likewise that he is free of Malversation, and ought to Bruick his Office during his Life, peaceablie, conform to his said Commission as the said Gift, and Summonds of Declarator duely Executed, and callc, shown to Our saids Lords has Testified, and so Our saids Lords may evidently perceive how Wrongously, and Unjustly the saids Magistrats intend to proceed in the said Matter, and pronounce and give forth Acts of Regulations; and Exciseat Grounds of Quarrel against the said Complainer, albeit they be no ways Judges competent to him therein for the Reasons and Causes foresaid, and others, &c. And therefore, the foresaid Procedure ought, and should be Advocate from the saids Magistrats to the saids Lords as only Judges Competent and unsuspected thereto, and the saids Magistrats ought, and should be Discharged from farther Proceeding, or Cognoscing in the said Matter, or Troubling, Pursuing, or Insisting against the said Complainer, as to Cognoscing of Malversations, or Regulatg of Clerks Dues in time coming for the Reasons and Causes foresaid, &c. as is alleadged. **CUR WILL IS HEREFORE,** And We Charge you, that ye lawfully Summond, Warn, and Charge the saids Magistrats, and their Clerk-deput Personally, or at their Dwelling-places, to Compear before Our saids Lords of Council and Session at *Edinburgh*, or where it shall happen them to be for the time, the First Day of *June* next to come, in the Hour of Cause with continuation of Days, bringand with them all Minuts and Acts of Regulations made by them in the foresaid Matter to be Seen and Considered by Our saids Lords, and to hear and see the same Advocate from them to Our saids Lords, and they Discharged from any farther Proceeding, Cognoscing and Determining therein till in time coming, in manner underwritten, Attour, We, and Our said Lords, in Our Name have Advocate, and hereby Advocats the foresaid Procedure, Acts, Minutes and Regulation, as to the Cognoscing of Malversations or Regulatg the Clerks Dues, (after the report made by the Lord Ordinar *in presentia*) from the saids Magistrats to Our saids Lords themselves as only Judges competent and unsuspect thereto, *Discharging* hereby, the saids Magistrats from all farther Proceeding, Cognoscing, and Determining in the said Matters or Troubling, Pursuing, or insisting against the said Complainer as to the Cognoscing of Malversations, or Regulatg the Clerks Dues for the Reasons foresaid and others, &c. and of their Offices in that part in time coming, &c. Signet the 27th, of *February* 1696, Intimat the said Day by Mr. *William Dallas* Nottar Publick.

At Edinburgh, the Eight Day of September One Thousand Six Hundred Ninety Six years, and of His Majesties Reign the Eighth Year.

THe which Day in presence of me Nottar Publick, and Witnesses under Subscriving, *Aeneas Mcleod* Town Clerk of *Edinburgh* being in company with *James Nasmyth* depute Town Clerk of *Edinburgh*, and several others; The said *Aeneas Mcleod* shewed tht upon the Fourth Day of September Instant, after hearing of a pretended Sentence of Derivation Read against himself, whereby the Magistrats and Council of *Edinburgh* did Depve him of his Employment of Town Clerk of the said Burgh, he did in presence of the said Magistrats and Council alleadge that their Procedure was Summar and Illegal as to the mann, and inequitable as to the Cause, in as far as he could not be Deprived of his Gift which w^{as} for Life, without a Libel or Citation, as also, that there was an Advocation, Signed and Imat, and called for at the Minut Book, whereby, the Magistrats of *Edinburgh* were Discharged from farther Troubling, Pursuing, or Insisting against him, as to the Cognoscing Malversations in time coming, and therefore, Protested that whatever Cost, Skeath, Damage, or Expenses he should sustain through the foresaid Summar, Illegal, and unjust Deprivation, should be Repaired by the Community, and by every particular Member of Council who had Voted the same; as being wilful and open Contemners of Authority, and thereupon took Instruments in the hands of *James Nasmyth* Depute Town-Clerk of *Edinburgh*, of which Instrument the said *Aeneas Mcleod* required an Extract from the said *James Nasmyth*, whereinto it was Answered by the said *James Nasmyth*, that he did acknowledge that the said *Aeneas Mcleod* did ask from him an Instrument in the Terms above-mentioned in Face of Council, but that he the said *James Nasmyth* was then expressly Discharged by the Provost of *Edinburgh* either to recee Instrument Money, or give forth any Instrument upon the Premisses, and therefore refused to give the said *Aeneas Mcleod* an Extract of his said Instrument, whereupon the said *Aeneas Mcleod* asked & took Instruments in the hands of Me Nottar Publick, under Subscriving, thir things were done within the House of *Mistress Henderson* Vintner in *Edinburgh* beeing upon the East El of the Parliament Clois betwixt the Hours of Seven and Eight at Night, Day, Moneth, Year of GOD, and of His Majesties Reign Respective foresaid, before, and in Presence of Mr. *Jo^s McKenzie* one of the Principal Clerks of Council and Session, Mr. *Alexander Mcleod* Advocate and *William Stuart* Writer in *Edinburgh*, with divers others, Witnesses specially called and required to the Premisses.

La esse ut permittitur assero Ego Jacobus Muirhead Notarius Publicus in Premissis requisitus testante manu mea signoque.

Which Instrument is Signed by the foresaids Witnesses.